IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5125 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DISTRICT COLLECTOR & 2 - Petitioner(s)
Versus
BHANUSHALI S TULSIDAS & 2 - Respondent(s)

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Appearance :
MR ND GOHIL, AGP for Petitioner(s) : 1 - 3.
MR BY MANKAD for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 17/11/2006

ORAL JUDGMENT

1. Mr. N.D.Gohil, learned AGP for the petitioners. Mr. B.Y. Mankad, learned counsel for the respondents.

2. Present is a petition under Article 227 of the Constitution of India by the petitioners District Collector, Kachchh at Bhuj, Deputy Collector, Nakhatrana, Kachchh at Bhuj and the Mamlatdar, Abdasa, Kachchh at Bhuj, are challenging the order passed by the Gujarat Revenue Tribunal in Appeal No. TEN-A.K.21/92,Ahmedabad, decided on 1.1.93 setting aside the orders passed by the petitioners in their capacity as the revenue courts/authorities.

3. The petitioners before this Court, in my considered opinion, cannot maintain a petition like this. A Tribunal or a revenue authority, which exercises quasi-judicial functions, cannot challenge the order passed by the superior authority in any proceedings. Be that as it may. I will take the present petition to be one on behalf of the State Government.

4. The facts in nutshell for disposal of the present writ application are that the present respondent no.1 at the time of the tour of Collector to village Nalia, made an application

praying therein that he being owner of survey no. 807 admeasuring 21 Acres and 13 Gunthas, his name be directed to be mutated in the revenue records. The Collector forwarded the application to the Mamlatdar for making an inquiry and passing appropriate orders. The respondent no.1 stated that he was the grandson of Naran Hiraji, name of Naran Hiraji was recorded as owner of the property in 1959 and that in the year 1962, land for the first time came to be recorded in the State's ownership therefore on the facts available in the records his name be mutated. The State examined the Talati, who stated that in the year 1959-60, name of of Naran Hiraji was recorded in the revenue records, but after promulgation, somewhere in the year 1962, a notice was issued and inquiry was made and by the order dated 29.1.62, the land which was lying fallow came to be recorded in the ownership of the State Government. The Mamlatdar, on strength of the evidence available before him holding that the land belonged to the State Government and as the present respondent

no.1 had no rights in the property rejected the application. Being aggrieved by the said order, the present respondent no.1 preferred Misc. Civil Application No. 24/89 before the Deputy Collector, Nakhatrana, who, by his order dated 30th April, 1990 [Annexure:B] rejected the same. The respondent no.1 took up the matter before the Collector in Appeal Case No. 68/90. As the same was rejected, he took up the matter before the Revenue Tribunal in Appeal No. TEN A.K.21/92,Ahmedabad. The Tribunal, after hearing the parties observed that Naran Hiraji was the grandfather of the respondent no.1, name of Naran Hiraji was recorded in the revenue records prior to 1962 but the land was lying fallow therefore it was recorded in the name of the State Government, that too, after the promulgation.

5. Shri Gohil, learned AGP for the petitioners-State submits that the order passed by the Revenue Tribunal is perverse, firstly because, the Tribunal has recorded a finding that Naran Hira was the grandfather, while in fact, there

was no evidence on the records. I must reject this argument immediately in view of the narration of the facts in the order passed by the learned Tribunal. The Tribunal has recorded that Shamji Tulsidas (the present respondent no.1] had stated [statement was available on page 53] that suit survey number was originally recorded in the name of his grandfather Naran Hira. If such was the reading of the learned Tribunal, then, it would not be permissible for the State to say that the learned Tribunal misread the evidence.

6. The Tribunal has also observed that the Talati had made a categorical statement that prior to 1962, specially in the year 1959-60, name of Naran Hira was recorded in the revenue records. According to the Talati, the land was lying fallow, therefore, notices were issued and after making an inquiry, the land was recorded in the name of the State Government. From the statement made, it would clearly appear that prior to 1962 or before the order dated 21.9.62, the State Government was not in the picture. The Tribunal

has observed that the State Government could not satisfy the Tribunal that under what authority of law, the land which was lying fallow would become govt. property. If there are no provisions of law authorizing the State Government to convert the private land into the govt. land then simply because it was lying uncultivable, an inquiry and consequent order of mutation in the name of the State could not be made. If the land did not belong to the State Government prior to 1962 and if there is nothing on the records to show that in the year 1962, except for making the entry, the State Government otherwise acquired the title either by purchase, gift or acquisition, it cannot be said by the State that they are owners of the property.

7. The Tribunal, in the considered opinion of this Court was absolutely justified in recording the findings in favour of the respondent.

8. I find no reason to interfere. The petition deserves to and is accordingly dismissed. Rule is discharged. Interim relief, if any, stands

vacated. No costs.

[R.S. GARG, J.]

pirzada/-